

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 14 1995

OFFICE OF SECRETARY

In re Applications of)
)
SHARON A. MAYER and)
MILFORD BROADCASTING COMPANY)
)
For a Construction Permit for a)
New FM Broadcast Station on)
Channel 271C2 at Milford, IA)

MM Docket No. 92-317
File No. BPH-911004MG
and BPH-911003MI

TO: The Honorable Joseph Chachkin,
Office of Administrative Law Judges

DOCKET FILE COPY ORIGINAL

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENTS

Sharon A. Mayer ("Mayer") and Milford Broadcasting Company ("Milford"), ("Joint Petitioners"), by counsel and pursuant to Section 73.3525 of the Commission's Rules, hereby jointly request Commission approval of the Settlement Agreement annexed hereto among Mayer, Milford and Campus Radio Company, Inc. ("Campus") and the Stock Purchase, Financing and Option Agreement, also annexed hereto, between Mayer and Campus, pursuant to which Campus will invest in Mayer's station in exchange for a minority non-controlling interest (collectively the "Agreements"). Pursuant to the terms of the Agreements, Joint Petitioners also request that the Commission grant the pending Mayer application, as amended by Mayer pursuant to the Stock Purchase, Financing and Option Agreement, and that the

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Commission dismiss with prejudice the mutually-exclusive application of Milford.

1. The above-referenced applications were filed in 1991 and designated for hearing in 1992. Before the case could be resolved, the applications became subject to the hearing freeze imposed following the D.C. Appeals Court decision in Bechtel v. FCC 10 F. 3d 938 (D.C. Cir. 1994).

2. In response to the Commission's Public Notice of September 15, 1995, Mayer and Milford have executed agreements with each other and with Campus without regard to either applicant's legitimate and prudent expenses. The agreements are annexed hereto as Exhibits 1 and 2. Also annexed hereto as Exhibits 3 and 4 are declarations from each party which provide the relevant information required by Section 73.3525. The parties have modeled Campus's investment in Mayer's application on the type of arrangement approved by the Commission in Orion Broadcasting, Ltd. (Gifford, FL), 5 FCC Rcd 2913 (1990), settlement agreement approved, 9 FCC Rcd 314 (1993).¹ Finally, annexed hereto as Exhibit 5 is a statement prepared on behalf of Campus by its consulting engineer, D.L. Markley & Associates,

¹ Although a party to the Agreements, Campus is not an applicant and has not, therefore, furnished a declaration. Should a declaration be requested by the Commission, counsel to Campus has stated that one will be supplied.

Inc., demonstrating Campus's compliance with the Commission's multiple ownership rules respecting duopolies.²

3. Approval of the Agreements would serve the public interest. Such approval will facilitate the termination of a proceeding that has been pending for over three years and, in the absence of settlement, could be prolonged for many years to come. Termination of the proceeding will conserve the Commission's resources, expedite inauguration of new FM radio service to Milford, Iowa and is consistent with the Commission's desire to settle proceedings as stated in the September Notice.

² As indicated in the Agreements, it is contemplated that Mayer will seek to amend her application to specify as the applicant a new entity in which she will be the controlling 51% shareholder and Campus will have a 49% interest, and to specify a new site colocated with Campus's station KUOO(FM), Spirit Lake, Iowa.

WHEREFORE, in view of the foregoing, it is respectfully requested that this Joint Request, along with the attached Agreements, be approved, that the Mayer application as amended be granted and that the Milford application be dismissed with prejudice.

Respectfully submitted,

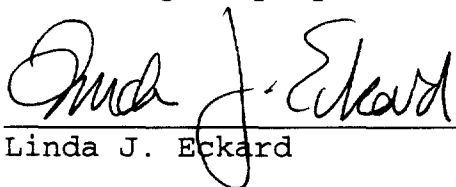
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By: 
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Attorneys for Milford
Broadcasting Company

By: 
Linda J. Eckard

December 14, 1995

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS AGREEMENT dated as of December 13, 1995 is made by and between Milford Broadcasting Company ("Milford"), Sharon A. Mayer ("Mayer") and Campus Radio Company, Inc. ("Campus") (Milford, Mayer and Campus being sometimes collectively referred to herein as the "Parties").

WHEREAS, Milford filed an application ("Milford Application") with the Federal Communications Commission ("Commission" or "FCC") and Mayer filed an application ("Mayer Application"), each requesting authority to construct a new FM broadcast station (the "Station") on Channel 271C2 at Milford, Iowa (BPH-911003MI and BPH-911004 MG, respectively); and

WHEREAS, said Applications are mutually exclusive; and

WHEREAS, Milford and Mayer (the "Settling Parties") are willing to settle this proceeding; and

WHEREAS, the Mayer Application will be the surviving application and Mayer will create a new entity to be named New Milford Broadcasters, Inc. ("NMBI") and amend its application to reflect NMBI as the Milford applicant and to reflect a change in proposed site to the antenna site of Campus' licensed radio station KUOO(FM), Spirit Lake, Iowa (the "NMBI Application"); and

WHEREAS, Campus is willing to fund NMBI to the extent necessary to carry out this Agreement, including the funds required for the settlement payments to the settling Milford

applicants and for the construction of the station and necessary operating capital; and

WHEREAS, Campus will acquire a minority ownership interest in NMBI; and

WHEREAS, the Settling Parties wish to avoid further costly and lengthy proceedings before the Commission and possibly the courts by terminating this litigation which began with the filing of the Milford applications in October of 1991; and

WHEREAS, the Parties believe that the settlement proposal herein would be in the public interest in that it would conserve the resources of the Commission and the Settling Parties and would expedite resolution of this proceeding and permit the more prompt institution of a new FM broadcast service at Milford, Iowa; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto agree as follows:

1. **Effective Date.** This Agreement shall be effective upon execution by Milford, Mayer and Campus and until consummated or terminated in accordance with the provisions hereof.

2. **Joint Request.** No later than December 14, 1995, Settling Parties will file a joint request ("Joint Request") with the Commission, pursuant to Section 73.3525 of the Commission's Rules, seeking:

- (a) approval of this Agreement;
- (b) dismissal with prejudice of the Milford Application (BPH-911003MI);
- (c) grant of the NMBI Application with no material adverse conditions.

The Parties hereto shall file with the Joint Request a copy of this Agreement together with all supporting documentation required by Section 73.3525 of the Commission's Rules.

3. Cooperation. The Parties will take no action adverse to this Agreement, the Joint Request, any amendment filed with respect to the Mayer Application consistent with the terms of the settlement of this proceeding, the grant of the NMBI Application, the dismissal of the Milford Application or the payment provided in Section 5 of the Agreement, and the Parties will cooperate with each other to obtain approval of the Joint Request and the actions therein requested. The Parties hereto agree to cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be reasonably required, and by expeditiously filing any additional documents that may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules or to effectuate the objectives of this Agreement. The Parties agree to provide the Commission with any information requested by the Commission within seven (7) days after receipt of each such request.

4. **Reformation.** In the event that the Commission should refuse to approve this Agreement, the Parties shall examine the objections of the Commission and will timely make individual and joint good faith efforts to resolve all objections (other than modifying the amount specified in Section 5) in a manner which reflects as closely as possible the intentions of the Parties as set forth herein, in order to resubmit the Agreement promptly for approval.

5. **Payment.** In consideration of the dismissal of the Milford Application, Milford shall be paid the sum of One Hundred Fifty-Two Thousand Dollars (\$152,000.00) (the "Settlement Price"). Campus agrees to arrange financing in an amount, among other things, sufficient to pay Milford the Settlement Price. Establishment of the escrow account provided in Section 6 hereof shall satisfy this requirement. The Settlement Price shall be paid out of the escrow account to Milford by wire transfer or by certified check made payable to Milford or its assigns, or as otherwise designated by it in writing. This payment shall be made at a Closing to be held at the D.C. offices of Reed Smith Shaw & McClay within three (3) business days following the date the FCC order or other document (the "Order") approving this Agreement and dismissing the Milford Application and granting the NMBI Application with no material adverse conditions has become final. An Order shall be final when it is no longer subject to further

administrative or judicial reconsideration, review, or appeal.

There shall be no obligation to pay the Settlement Price or any portion thereof except as specifically provided in this Agreement.

In addition to the payment provided herein, Milford and Mayer shall each provide to the other at the closing, a general release, as to all claims, obligations, and liabilities each may have relating to the other, whether direct or indirect. Milford's release shall be binding on all its officers, directors and shareholders, .

6. Escrow. By December 26, 1995, Campus will deposit in an interest-bearing escrow account an amount equal to One Hundred Fifty-Two thousand dollars (\$152,000.00), which is the amount of the Settlement Price. The escrow agents for said escrow account will be the attorneys for Milford and Campus ("Joint Escrow Agents") and said account will be subject to the terms of the Escrow Agreement in the form attached hereto as Exhibit 1. The Parties agree that if the escrow account is not funded in accordance with the foregoing, either of the Settling Parties may terminate this Agreement, withdraw from the Joint Request and continue to prosecute their applications and this shall be the sole remedy of the Settling Parties.

7. Termination. This Agreement may be terminated as provided below.

- (a) Any Party hereto may terminate this Agreement upon ten (10) days' written notice to the other if a Joint Request reflecting settlements with all Milford applicants has not been filed with the Commission within ten (10) days from the date of this Agreement.
- (b) In the event that there is no Final Order as provided in Section 5 hereof approving the Joint Request and taking the actions therein requested within one (1) year of the filing of a Joint Request, any of the Parties hereto shall have the right thereafter to terminate this Agreement upon ten (10) days written notice to the other parties.
- (c) In the event the FCC disapproves the Joint Request, in whole or in part, and its order doing so becomes a Final Order as defined in Section 5 hereof, subject to the requirements of Section 4 hereof, any party hereto shall have the right to terminate this Agreement upon ten (10) days written notice to the other parties.
- (d) Termination may also occur as provided in Section 6 hereof.

A termination of this Agreement shall also constitute a termination of any Escrow Agreement then outstanding for the benefit of Milford.

8. **Formation of NMBI.** To effectuate the terms of this Agreement, Mayer will form a new company named New Milford Broadcasters, Inc. ("NMBI"), under the laws of the State of Iowa and upon filing of the Joint Request, will also seek to amend her application to make NMBI the applicant, contingent upon approval of the Joint Request.

9. **Notices.** Any notice to a Party required or permitted to be given under this Agreement shall be duly given if sent in writing by personal delivery or by overnight mail service to the other Parties at the following addresses or such other address as may be specified by a Party in writing:

If to Milford:	Mr. Kevin Galbraith Milford Broadcasting Company 15 Horsehoe Lane Paoli, PA 19301
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Copies to:	Linda J. Eckard, Esq. Roberts & Eckard, P.C. 1150 Connecticut Ave., N.W. Suite 1100 Washington, DC 20036
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If to Mayer:	Ms. Sharon A. Mayer R.R. 1, Box 169 Milford, IA 51351
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Copies to: John L. Tierney, Esq.
Tierney & Swift
1001 22nd Street, N.W.
Suite 350
Washington, DC 20037

If to Campus: Mr. Paul C. Hedberg
Campus Radio Company, Inc.
Box 528
Spirit Lake, IA 51360

Copies to: Marnie K. Sarver, Esq.
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Notice shall be deemed to have been given upon the date of personal delivery or the date of deposit in overnight mail service, charges prepaid.

10. Assignment. This Agreement may not be assigned by Milford except as provided in Section 5 with respect to the proceeds. Mayer may assign this Agreement to a corporation wholly owned by her and Campus may assign it to any entity in which Paul Hedberg holds a controlling interest. Any person or entity to which this Agreement is assigned shall execute a counterpart of this Agreement and agree to be bound hereby. Any assignment shall not be effective until such executed counterparts have been delivered to the Parties.

11. Only Agreement. This Agreement is the only Agreement between the Parties hereto and contains all of the terms and

conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by all Parties. Any other Agreement between the Parties dealing with the subject matter of this Agreement shall be deemed to have been superseded and replaced by this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. Each Party shall bear its own expenses for the preparation of this Agreement and all supporting documents.

12. Counterparts. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

13. Governing Law. This Agreement shall be construed under the laws of the District of Columbia pertaining to contracts made and to be performed in the District of Columbia.

14. Authority. Each Party hereto expressly warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such Party's legal ability to perform its responsibilities hereunder.

15. Specific Performance. Because of the unique nature of the broadcast authorization which is the subject of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

16. **Costs**. If, on account of an alleged breach or default by a Party of its obligations under this Agreement, another Party shall employ an attorney to enforce or defend any of its rights or remedies under this Agreement, the prevailing party shall be entitled to recover its reasonable costs incurred in such connection, including but not limited to reasonable attorneys, fees.

IN WITNESS WHEREOF, the undersigned Party has affixed his/her signature to this Agreement on the date indicated below.

MILFORD BROADCASTING COMPANY

Date: 12/14/95

By:

Kenn Gallman PRESIDENT

Settlement Agreement dated as of December 13, 1995

IN WITNESS WHEREOF, the undersigned Party has affixed his/her signature to this Agreement on the date indicated below.

CAMPUS RADIO COMPANY, INC.

Date: 12-13-95

By: Paul C. Hedberg
Paul C. Hedberg, President

Settlement Agreement dated as of December 13, 1995

IN WITNESS WHEREOF, the undersigned Party has affixed his/her
signature to this Agreement on the date indicated below.

SHARON A. MAYER

Date: 12-13-95

By:

Sharon A Mayer
Sharon A. Mayer

Settlement Agreement dated as of December 13, 1995

ESCROW AGREEMENT

This Escrow Agreement, made by and among Milford Broadcasting Company ("Milford"), Sharon A. Mayer ("Mayer") and Campus Radio Company, Inc. ("Campus") (together the "Parties") as of the date last set forth below, reflects the understanding and agreement of the Parties as to the terms that will govern the Escrow Account to be established pursuant to the Settlement Agreement dated as of December 13, 1995, by and among the Parties (the "Settlement Agreement").

1. Capitalized terms which are not defined herein shall have the same meaning as ascribed to them in the Settlement Agreement.

2. Pursuant to Section 6 of the Settlement Agreement, the Parties and the Joint Escrow Agents named as provided therein will execute this Escrow Agreement.

3. No later than the last date set forth in Section 6 of the Settlement Agreement, Campus will deposit or cause to be deposited with the Joint Escrow Agents One Hundred Fifty-Two Thousand Dollars (\$152,000.00) in cash, by wire transfer or by check ("Escrow Funds"). The Escrow Funds shall be held and deposited by the Joint Escrow Agents in an interest bearing Escrow Account until the Escrow Funds are distributed at the Closing as provided in the Settlement Agreement or until this Escrow Agreement is terminated.

4. The Joint Escrow Agents shall deposit the Escrow Funds in one or more commercial banks doing business in Washington, D.C., in an interest bearing account or accounts insured by the Federal Deposit Insurance Corporation and keep the same sum on deposit so long as the conditions for distribution of the Escrow Funds have not occurred. Upon distribution of the Escrow Funds to Milford, interest earned during the first three (3) months after establishment of the account shall be paid to Campus and any additional interest will be paid to Milford.

5. The Joint Escrow Agents shall distribute the Escrow Funds as set forth below:

(a) The Joint Escrow Agents shall distribute the Escrow Funds to Milford as part of the Closing by wire transfer or certified check.

(b) In the event the Joint Escrow Agents are notified by all of the Parties hereto not to distribute the Escrow Funds, the Joint Escrow Agents shall not make a distribution of the Escrow Funds until the Parties authorize distribution in writing.

(c) In the event that one of the Parties hereto disputes whether disbursements should be made, such Party shall notify the Joint Escrow Agents in writing prior to the date the disbursement is due to be made, and the Joint Escrow Agents shall promptly notify the other Parties. The money shall nevertheless be disbursed under this Escrow Agreement on the sixtieth day after the date for Closing specified in Section 5 of the Settlement Agreement, unless the Joint

Escrow Agents receive written notification by the scheduled date of the disbursement that legal action has commenced in a court of competent jurisdiction. If such notification is timely received, then no disbursement shall be made until a final judgment by a court of competent jurisdiction disposes of any controversy between the Parties and instructs the Joint Escrow Agents accordingly, or until the Parties settle their controversy and jointly instruct the Joint Escrow Agents in writing how to proceed.

(d) Subject to the foregoing, in the event the Settlement Agreement is terminated as provided in Section 7 thereof, the Joint Escrow Agents shall return the Escrow Funds and any accrued interest to Campus.

6. Acceptance by the Joint Escrow Agents of their duties under this Escrow Agreement is subject to the following terms and conditions, which the Parties and the Joint Escrow Agents hereby agree shall govern and control the rights, duties and immunities of the Joint Escrow Agents:

(a) The duties and obligations of the Joint Escrow Agents shall be determined solely by the express provisions of this Escrow Agreement and the Joint Escrow Agents shall not be liable except for the performance of such duties and obligations as are specifically set out in this Escrow Agreement. The Joint Escrow Agents shall not be bound in any way by any other agreement or contract between the Parties (whether or not the Joint Escrow Agents have knowledge thereof), except for the Settlement Agreement.

(b) The Joint Escrow Agents will not be responsible in any manner whatsoever for any failure or inability of the Parties hereto to honor any of the provisions of this Escrow Agreement or the Settlement Agreement.

(c) The Parties agree jointly and severally to reimburse and indemnify the Joint Escrow Agents for, and to hold them harmless against, any loss, liability or expense incurred without bad faith, willful misconduct or gross negligence on the part of the Joint Escrow Agents, arising out of the performance of their duties and obligations under this Escrow Agreement, as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Escrow Agreement.

(d) The Joint Escrow Agents shall be fully protected in acting upon and relying upon any advice, certificate, notice, direction, instruction, request or other paper or document which the Joint Escrow Agents in good faith believed to be genuine and to have been signed or presented by the proper party; and they may assume that any person purporting to give such advice, certificate, notice, direction, instruction, request or other paper or document, has been duly authorized to do so.

(e) The Joint Escrow Agents shall not be liable for any error of judgment, or for any act done or step taken or omitted by them in good faith or for any mistake in fact or law, or for anything which they may do or refrain from doing

in connection herewith, except their own gross negligence or willful misconduct.

(f) Either Joint Agent may resign and be discharged from its duties hereunder at any time by giving notice of such resignation to the other parties hereto specifying a date (not less than thirty (30) days after giving such notice) when such resignation shall take effect. Promptly after such notice, a successor escrow agent shall be appointed by mutual agreement of Campus, Milford and Mayer, such successor to become the escrow agent hereunder upon the resignation date specified in such notice. If Campus, Milford and Mayer are unable to agree upon a successor escrow agent within twenty (20) days after such notice, the resigning Joint Escrow Agent shall be entitled to appoint its successor. The Joint Escrow Agent shall continue to serve as Escrow Agent until its successor has assumed in writing the Joint Escrow Agent's obligations hereunder and receives the Joint Escrow Deposit.

7. Subject to the provisions of Section 5 hereof, this Escrow Agreement shall terminate if any of the following occurs: (a) the obligations of the Joint Escrow Agents are fully performed; (b) the Parties, in writing, order the Joint Escrow Agents to terminate this Escrow Agreement; or (c) the Settlement Agreement is terminated as provided therein.

8. The Joint Escrow Agents join in the signing of this Escrow Agreement to acknowledge their duties and obligations hereunder.

9. This Escrow Agreement may be assigned by any of the Parties to any person or entity to which it has assigned its rights and obligations under the Settlement Agreement in accordance with Section 10 thereof. No other assignment shall be permitted without the written consent of the other Parties.

10. This Escrow Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their permitted heirs, assigns, successors, and legal representatives, and may be executed in counterparts, all of which together, so executed, shall constitute one and the same document. This Agreement contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by all Parties and the Joint Escrow Agents. Any other Agreement between the Parties dealing with the subject matter of this Agreement shall be deemed to have been superseded and replaced by this Agreement.

11. Any notice to a party required or permitted to be given under this Escrow Agreement shall be duly given if sent in writing by personal delivery or by overnight mail service to the other party at the following address or such other address as may be specified by the party in writing:

If to Campus:

Mr. Paul C. Hedberg
Campus Radio Company, Inc.
Box 528
Spirit Lake, IA 51360

If to Milford:

Milford Broadcasting Company
c/o Kevin W. Galbraith
15 Horsehoe Lane
Paoli, PA 19301

If to Mayer:

Sharon A. Mayer
R.R. 1, Box 169
Milford, IA 51351

If to the Joint Escrow Agents:

Marnie K. Sarver, Esquire
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Linda J. Eckard, Esquire
Roberts & Eckard, P.C.
1150 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Notice shall be deemed to have been given upon the date of personal delivery or the date of deposit in overnight mail service, charges prepaid.

12. This Agreement shall be construed under the laws of the District of Columbia pertaining to contracts made and to be performed in the District of Columbia.